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MICHAEL RODAK, JR. CLE

No. 71-6792

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

William Clinton Gardner, Petitioner

vs.

United States of America, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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San Francisco, California

RESPONSE NOT PRINTED

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No.

William Clinton Gardner, Petitioner

vs.

United States of America, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

William Clinton Gardner, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on January 10, 1972.

Opinions Below

The opinion of the Court of Appeals is reported at 454 F.2d 534, and is printed in Appendix A hereto, infra, page A-2. The judgment of the Court of Appeals is printed in Appendix A hereto, infra, page A-6.

Jurisdiction

The judgment of the Court of Appeals (Appendix A, infra, page A-6) was entered on January 10, 1972. A timely petition for

rehearing was denied on March 15, 1972 (Appendix A, infra, page A-7). A timely motion to stay mandate was filed March 27, 1972 (Appendix A, infra, page A-8). The order staying issuance of mandate was granted on the same day (Appendix A, infra, page A-9). However, the present attorney was not appointed by the court until April 21, 1972 (Appendix A, infra, page A-10) and was not able to obtain a complete record of the case until May 16, 1972. The jurisdiction of this Court is invoked under section 1254 (1), Title 28, United States Code.

Questions Presented For Review

1. Does section 1708, Title 18, United States Code, require proof that a defendant who unlawfully possessed mail matter knows the same to be stolen from the United States mails?

2. Is it constitutionally permissible to infer guilty knowledge to a defendant because of unexplained recent misusing possession of stolen mail?

3. Is a defendant denied due process of law by the operation of the inference from unexplained recent possession of stolen mail matter, that the defendant had the requisite guilty knowledge?

Constitutional and Statutory Provisions Involved

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

"nor shall any person be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..."

Section 1708, Title 18, United States Code, is reprinted in Appendix A, infra, page A-1.

Statement of the Case

On the morning of June 11, 1969, Mrs. Sterling Pillsbury placed in her mailbox for pickup by the postman a savings and loan association pre-addressed, postage prepaid, "save-by-mail" envelope containing a passbook, a deposit slip, and two endorsed checks. The following morning petitioner appeared at the savings and loan association office, deposited the two checks to the Pillsbury account, and withdrew $7,500 -- $500 in cash and a $7,000 check. Later that day he returned, stated that he was Dr. Pillsbury, and attempted to cash the $7,000 check. He was asked to wait while the manager, who knew Dr. Pillsbury, was summoned. After waiting a few moments, petitioner left the bank leaving the check behind. His apprehension, indictment, and conviction followed. He was also prosecuted in a state court for forgery as a result of the same incident.

The judgment of the Court of Appeals for the Ninth Circuit affirming the judgment of the district court was made on January 10, 1972. A timely petition for rehearing

was denied on March 15, 1972. Petitioner applied for a stay of mandate upon the decision of January 10, 1972, in order to seek a review of the matter by this Court. On March 27, 1972, the Court of Appeals for the Ninth Circuit ordered the mandate stayed pending the disposition of this petition to be filed on or before April 15, 1972. This petition was not filed before April 15, 1972, because petitioner lost contact with his court appointed attorney for his appeal to the Court of Appeals, and the present attorney was not appointed until April 21, 1972, and was not able to obtain a complete record of the case on appeal until May 16, 1972.

Reasons for Granting the Writ

I

Section 1708, Title 18, United States Code, requires proof that a defendant who unlawfully possessed mail matter knows the same to be stolen from the United States mails. That section is premised on protecting the mails. However, no proof, fact, or circumstance at petitioner's trial showed or tended to show that petitioner had any knowledge that the passbook, deposit slip and checks were stolen from the United States mails.

In holding that the government is not required to prove that petitioner knew the stolen matter was stolen from the mails, the court of Appeals conflicts with the decisions of the Fifth Circuit in Allen v. United States, 387 F.2d 641 (5th Cir. 1968), and the Tenth Circuit in Webb v. United States, 347 F.2d 363 (10th

Cir. 1965).

In reversing a conviction under 18 U.S.C. section 1708, of a defendant who negotiated a welfare check which had been mis-addressed to his home, the court in Allen, supra, at page 643, pointed out "(t)hat (the check) was stolen is not sufficient, the proof must show that it was stolen from the mails."

However, the decision of this court does follow decisions holding that under 18 U.S.C. section 1708 the prosecution need only prove that the defendant knew the mail matter was stolen, but that the prosecution need not prove that the defendant knew the mail matter to be stolen from the United States mails. United States v. Hines, 256 F.2d 561, 563 (2d Cir. 1958); Smith v. United States, 343 F.2d 539, 543 (5th Cir. 1965), cert. denied 382 U.S. 861.

Petitioner respectfully submits that this ruling should be reviewed by this court to clarify the use of 18 U.S.C. section 1708 in federal court.

II

It is constitutionally impermissible to infer guilty knowledge to a defendant because of unexplained recent misusing possession of stolen mail matter.

In U.S. v. Hines, 256 F.2d 561 (2d Cir. 1958), the court ruled that from evidence of mailing, non-receipt and recent misusing possession, an inference arises that the mail matter

in question was stolen from the United States mails, and that the defendant had knowledge thereof, unless the defendant explains a possession innocent within the meaning of section 1708. This amounts to an inference of guilt from silence which is clearly unconstitutional. Such an inference shifts the burden of explanation to the defendant, which burden, under the circumstances of the instant case, would have compelled the petitioner to testify and expose himself to a substantial risk of self-incrimination to a forgery charge in state court. Because this burden is not met by a general denial, petitioner was obliged to testify as to how, where, and under what circumstances he acquired possession of the passbook, deposit slip and checks. Testimony which would have disproved the knowledge element of section 1708 would give rise to the inference that petitioner knew they were stolen. Thus, the offering of an explanation exonerative under federal law would have exposed petitioner to a substantial risk of self-incrimination under state law. Standing on a denial would protect petitioner from self-incrimination as to the state offenses but result in an inference of guilt under federal law.

This is much the same situation as that found in Leary v. United States, 395 U.S. 6, 13-27 (1969) where Dr. Leary's conviction for the transportation of marijuana on which a transfer tax had not been paid was reversed because admitting possession, as required by the form under Section 4744, Title 26, United States Code, would have exposed Leary to a substantial risk of self-incrimination as possession of marijuana is a violation of state law in all fifty states. And as Leary's

conviction was reversed, petitioner respectfully submits that his conviction, too, should be reversed.

III

Petitioner was denied due process of law by he operation of the inference from unexplained recent possession of stolen mail matter, that petitioner had the requisite guilty knowledge.

The circumstances of the instant case, in which it was inferred from misusing possession of stolen matter that (1) the matter was stolen from the United States mails, and (2) petitioner had knowledge thereof, denied petitioner due process of law in the same way that Dr. Leary was denied due process of law by the operation of the presumption of 21 U.S.C. section 176a (Appendix B, page B-1) Leary v. United States, supra.

That presumption provides that possession of marijuana shall be deemed sufficient evidence to authorize conviction unless defendant explains his possession to the satisfaction of the jury. Leary, supra, at 30. It allows a jury to infer from possession of marijuana (1) that the marijuana was imported or b⁄ ought into the United States illegally; and (2) that the defendant knew of the unlawful importation. It was ruled unconstitutional as a denial of due process because it could not be established that possessors of marijuana are "more likely than not" to know of its origin. Leary, supra, at page 36.

But the judicially created and approved

inference in the instant case acts in much the same way. From the basic fact of possession is inferred (1) that the matter was stolen from the United States mail, and (2) that appellant possessed the matter with knowledge thereof. But it cannot be said, as a matter of common sense, that most possessors of stolen matter which could have been mailed, are more likely than not to know that such matter was stolen from the United States mails.

Petitioner also would like to point out that in criminal cases there is no practical distinction between inferences and presumptions. Both reasoning devises are necessarily permissive. In Rogers v. United States, 402 F.2d. 830 (9th Cir. 1968), the court indicated that inferences are often called presumptions in criminal cases and have the same practical effect of shifting the burden of proof.

> The government has a heavy burden of proof in a criminal case; the defendant has none. The inferences (they are sometimes called presumptions) arising from possession relieve the government of much of that burden. As a practical matter, they tend to shift the burden to the defendant, however piously we may say and tell juries that they do not. Rogers, supra at page 834.

As this court declared in Leary, supra, so should it declare in the instant case, that mere misusing possession of the contents of a recently stolen envelope may not, without more evidence, be used to infer that petitioner knew it was stolen from the United States mails.

18 U.S.C. §1708

1708. Theft or receipt of stolen mail matter generally.—Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both. (June 25, 1948, c. 645, § 1, 62 Stat. 779; May 24, 1949, c. 139, § 39, 63 Stat. 95; July 1, 1952, c. 535, 66 Stat. 314.)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

WILLIAM CLINTON GARDNER,
Defendant-Appellant.

No. 26,495

[January 10, 1972]

Appeal from the United States District Court
for the Central District of California

Before: HAMLEY, BROWNING, and ELY, Circuit Judges

PER CURIAM:

This is an appeal of a conviction for violation of 18 U.S.C. § 1708, possession of stolen mail. We affirm.

On the morning of June 11, 1969, Mrs. Sterling Pillsbury placed in her mailbox for pickup by the postman a Home Savings & Loan Association pre-addressed, postage prepaid, "save-by-mail" envelope containing a passbook, a deposit slip, and two endorsed checks. The following morning appellant appeared at Home Savings, deposited the two checks to the Pillsbury account, and withdrew $7,500—$500 in cash and a $7,000 check. Later that day he returned, stated that he was Dr. Pillsbury, and attempted to cash the $7,000 check. He was asked to wait while the manager, who knew Dr. Pillsbury, was summoned. After waiting a few moments, appellant "rushed" from the bank, leaving the check behind. His apprehension, indictment, and conviction followed.

Appellant argues that the evidence was insufficient to establish that he knew the matter he possessed was stolen from the mails, relying on *Allen v. United States*, 387 F.2d 641, 642 (5th Cir. 1968), and *Webb v. United States*, 347 F.2d 363, 364 (10th Cir.

1965). The government argues that it is not required to prove that appellant knew the items were stolen from the mails but only that appellant knew they were stolen, citing *Smith v. United States*, 343 F.2d 539, 543 (5th Cir. 1964), and *United States v. Hines*, 256 F.2d 561, 563 (2d Cir. 1958).

The government's view seems to us correct. The statutory requirement that the matter be stolen from the mails simply provides the basis for federal jurisdiction. Absent a contrary legislative intention, knowledge of a strictly jurisdictional element of a federal offense is not prerequisite to conviction. *See United States v. Roselli*, 432 F.2d 879, 891 n.17 (9th Cir. 1971); *United States v. Howey*, 427 F.2d 1017, 1018 (9th Cir. 1970).

The legislative history of section 1708 makes it unequivocally clear that the government need only prove that appellant knew the matter was stolen. *See United States v. Hines, supra*, 256 F.2d at 563, and *Smith v. United States, supra*, 343 F.2d at 543. 18 U.S.C. § 317 (1940), the predecessor to section 1708, did require proof that a defendant knew the matter he possessed was stolen from the mails. In *Brandenburg v. United States*, 78 F.2d 811 (3d Cir. 1935), the Third Circuit reversed a conviction under section 317 because the government failed to establish such knowledge. In response to *Brandenburg*, Congress amended section 317 to delete this element of the knowledge requirement. *See* Sen. Rep. No. 864, 76th Cong., 1st Sess. 1939; H.R. Rep. No. 734, 76th Cong., 1st Sess. 1939.[1]

---

[1]Section 317 prohibited the theft of matter from the mails. It then prohibited the possession of matter "which has been so stolen . . . as herein described, knowing the same to have been *so* stolen . . ." (emphasis added). The amendment eliminated the second "so." The House Report states:

> "Under the existing statute it is necessary for the Government, in order to secure a conviction for the crime of receiving property stolen from the mails, to prove not only that the property was stolen from the mails and that the receiver knew it was stolen, but also that he knew it was stolen from the mails. The reported bill amends the existing law so that it will sustain a conviction for the Government to prove that the property was in fact stolen from the mails and that the defendant knew the property he received had been stolen. The committee feel that this should be sufficient without requiring the Government to prove also that the defendant knew the property received had been stolen from the mails."

Appellant asserts that the evidence is inadequate in another respect. He claims that it does not establish that the stolen matter was in fact stolen from the mails, relying on *United States v. Logwood*, 360 F.2d 905, 907 (7th Cir. 1966). Of several other possible inferences from the evidence suggested by appellant, one merits discussion: that the "save-by-mail" envelope with its contents was delivered to Home Savings and thereafter misappropriated when no longer in the mails. Appellant relies upon the fact that no evidence was introduced to show the letter was not received by Home Savings.

Mail theft can rarely be established by direct evidence. *United States v. Mooney*, 417 F.2d 936, 938 (8th Cir. 1969). In assessing the circumstantial proof upon which the government must usually rely, the trier of fact "need not grasp for improbable explanations," but "may make common sense inferences from the proven facts." *United States v. Hines, supra*, 256 F.2d at 564. *See United States v. Zimple*, 318 F.2d 676, 680 (7th Cir. 1963).[2] Here appellant, posing as a customer, presented the checks and passbook at Home Savings about 10 o'clock on the morning after they had been mailed the preceding day about noon. Considering this short time span, it is highly improbable that these items could have been received at the Home Savings office in the regular course of the mail; that some unidentified person in that office could have appropriated them after their receipt and transmitted them to appellant; and that appellant could then have presented them for deposit shortly after the Home Savings office opened for public business. In short, the jury could reasonably infer from the evidence that the envelope was stolen while in the mails, that is, after it had been mailed by Mrs. Pillsbury and before it could be delivered to Home Savings.

Appellant argues that permitting an inference of guilt from the unexplained possession of recently stolen matter violates the privilege against self-incrimination because it permits guilt to be inferred from the defendant's silence. But the inference is not drawn from defendant's silence; it is available whether or not the defendant testifies. Cases in which the defendant testified include *United States v. Kye*, 411 F.2d 120, 122-23 (8th Cir. 1969);

[2] *See also* Whiteside v. United States, 346 F.2d 500, 504 (8th Cir. 1965); Anderson v. United States, 270 F.2d 124, 127 (6th Cir. 1959).

Whitehorn v. United States, 380 F.2d 909, 912 (8th Cir. 1967); *Anderson v. United States*, 270 F.2d 124, 126-27 (6th Cir. 1959); and *United States v. Hines, supra*, 256 F.2d at 564.

Appellant also claims that to permit an inference of guilt in the absence of a contrary explanation shifts the burden of proof, requires him to explain his recent possession of the stolen matter, and, in this instance, involves significant self-incrimination problems because he was also being prosecuted in state court for forgery as a result of the same incident.

His reliance upon *Leary v. United States*, 395 U.S. 6 (1969), to support this argument is misplaced, for while a rebuttable presumption such as the one in *Leary* shifts the burden of proof, an inference "does not shift the burden of going forward to the defendant for the trier of fact is left free to reject the inference in part or in whole. Nor does it change the burden of persuasion or relieve the Government of its obligation to prove each element of the crime beyond a reasonable doubt." *McAbee v. United States*, 434 F.2d 361, 363 (9th Cir. 1970). A defendant may be led to testify because he fears the jury will draw the inference of guilt if he does not offer an explanation, but the inference has this effect "not by operation of law but only by close conformity with human observation. A defendant has no more right to complain of a properly instructed and rational inference than he does to complain of the laws of physics." *Id.* Moreover, appellant need not testify. He may explain his recent possession by evidence other than his own testimony, including the testimony of other witnesses.

Appellant also attacks the inference on due process grounds, relying again on *Leary, supra*. We rejected this argument in *McAbee v. United States, supra*, 434 F.2d at 363.

The judgment is affirmed.

JUDGMENT

United States Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff-Appellee,

v

WILLIAM CLINTON GARDNER,
Defendant-Appellant

No. 26495

APPEAL from the United States District Court for the Central District of California

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California

and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY
ATTEST: MAY 10 1972
, Clerk
By , Deputy

Filed and entered January 10, 1972

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 15 1972

WM. B. LUCK, CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM CLINTON GARDNER,

Defendant-Appellant.

No. 26,495

O R D E R

Before: HAMLEY, BROWNING, and ELY, Circuit Judges

The petition for rehearing is denied.

Dated: March 15, 1972

FILED

MAR 27 1972

WM. B. LUCK, CLERK

RECEIVED

MAR 27 1972

WM. B. LUCK, CLERK

illiam Clinton Gardner
g. No. 13117-148
O. Box 1000
ilacoom, Washington 98388

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

ILLIAM CLINTON GARDNER,

Defendant-Appellant.

Docket No. 26,495

MOTION TO STAY MANDATE

TO: The Honorable Richard H. Chambers, Chief Judge of the above cap-oned court and the associate judges thereof.

COMES NOW, the appellant William Clinton Gardner, respectfully moves his Honorable Court pursuant to Appellate Procedure 41 (b) and Section 452 f U.S.C.A. to stay mandate in the instant action to allow the clerk of the ourt (William B. Luck) enough time to locate the attorney appointed to epresent appellant on direct appeal. This appellant is a layman and can-ot prepare and file an application to the United States Supreme Court for Petition of Writ of Certiorari.

Wherfore and since, this court's jurisdiction has been properly in-oked by virtue of a timely noted notion to stay mandate, and where such elief has been prayed for, the relief sought should be granted.

United States Court of Appeals

FOR THE NINTH CIRCUIT

FILED

MAR 27 1972

WM. B. LUCK, CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM CLINTON GARDNER,

Defendant-Appellant.

No. 26495

ORDER STAYING ISSUANCE OF MANDATE

Upon application of William Clinton Gardner

~~Plaintiff-Appellee~~ Appellant (pro per) ... and good cause appearing, IT IS ORDERED that the issuance, under Rule 41 (a) of the Federal Rules of Appellate Procedure, of the certified copy of the judgment of this Court in the above cause be and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the Appellant (pro per) herein, provided such petition is filed in the Clerk's Office of the Supreme Court of the United States on or before April 15, 1972

In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

United States Circuit Judge.

DATED: SAN FRANCISCO, CALIF.

MAR 27 1972

A TRUE COPY
ATTEST: , Clerk
by , Deputy

POOR COPY

IN THE CASE OF

UNITED STATES OF AMERICA

WILLIAM CLINTON GARDNER

FOR

THE NINTH CIRCUIT

AT

San Francisco, California

05C01

Appeal from conviction in the Central District of California
To apply for certiorari

Felony

Misdemeanor

18 U.S.C. 1708

Certiorari

76974

COURT ORDER

APPOINTED COUNSEL

WAIVER OF RIGHT TO COUNSEL

APPEARING FOR APPOINTMENT FOR APPEAL

SUBSTITUTING COUNSEL

William Hawes,
Sept. 29, 1970

TIME SPENT

DATES

HOURS

IN COURT

A. ARRAIGNMENT &/OR PLEA

B. MOTIONS & PLEADINGS

C. BAIL HEARINGS

D. SENTENCE

E. TRIAL

F. REVOCATION HEARINGS

G. APPEALS COURT

H. OTHER (Specify below)

WM. B. LUCK, Clerk

TOTAL "IN COURT" HOURS

OUT OF COURT

A. INTERVIEWS & CONFERENCES

B. OBTAINING & REVIEWING RECORDS

C. LEGAL RESEARCH & BRIEF WRITING

D. MISCELLANEOUS & OTHER WORK (Specify)

E. TRAVEL TIME (Number of miles claimed ____)
(1) TO & FROM COURT (Check if by AUTO)
(2) OTHER TRAVEL TIME (Specify)

TOTAL "OUT OF COURT" HOURS

TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME

ITEMIZED EXPENSES (Specify on Separate Sheet)

AMT. PER ITEM

TOTAL ITEMIZED EXPENSES

TOTAL OF ITEMIZED & OTHER EXPENSES

CERTIFICATIONS OF ATTORNEY/PAYEE

Yes

No

SIGNATURE OF ATTORNEY/PAYEE

I SWEAR & AFFIRM THE TRUTH & CORRECTNESS OF ABOVE STATEMENTS

DATE

APPROVED FOR PAYMENT

SIGNATURE OF JUDGE/MAGISTRATE

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS

DATE

ATTORNEY

IS A PRIVATE ATTORNEY

PURSUANT TO A PUBLIC DEFENDER OR LEGAL AID AGENCY

A BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO.

VOUCHER NUMBER

76974

21 U.S.C. §176a

176a. Penalty for importing marihuana — Possession as evidence. — Notwithstanding any other provision of law, whoever, knowingly, with intent to defraud the United States, imports or brings into the United States marihuana contrary to law, or smuggles or clandestinely introduces into the United States marihuana which should have been invoiced, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such marihuana after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or whoever conspires to do any of the foregoing acts, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237 (c) of the Internal Revenue Code of 1954 [26 § 7237(c)]), the offender shall be imprisoned for not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this subsection, the defendant is shown to have or to have had the marihuana in his possession, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury.

As used in this subsection, the term "marihuana" has the meaning given to such term by section 4761 of the Internal Revenue Code of 1954 [26 § 4761].

For provision relating to sentencing, probation, etc., see section 7237(d) of the Internal Revenue Code of 1954 [26 § 7237(d)]. (Feb. 9, 1909, c. 100, § 2(h), as added July 18, 1956, c. 629, Title I, § 106, 70 Stat. 570.)